IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF VIRGINIA DANVILLE DIVISION

CHRISTOPHER B. JULIAN and)
RENEE G. JULIAN,)
Plaintiffs,) Civil Action No. 4:13-CV-00054
v.)
THOMAS J. VILSACK,)
SECRETARY OF AGRICULTURE)
U.S. DEPARTMENT OF AGRICULTURE,)
)
Defendant.)

MOTION TO CANCEL JURY TRIAL

The Defendant, by counsel, Kartic Padmanabhan, Assistant United States Attorney, moves the Court for the entry of an Order cancelling the jury trial currently set for September 4-5, 2014. *See* Dkt. No. 33. In support thereof, the Defendant states as follows:

On March 24, 2014, this Court dismissed all of Plaintiffs' claims with the exception of their request for judicial review of the final decision of the USDA. *See* Dkt. No. 45. On July 16, 2014, Defendant filed a Motion for Summary Judgment addressing this sole remaining issue.

See Dkt. Nos. 65, 66. Judicial review of final decisions of the USDA National Appeals Division (NAD) is to be in accordance with the Administrative Procedures Act (APA) under Chapter 7 of Title 5 of the United States Code. *See Balfour Land Co., L.P. v. United States*, No. 7:08-cv-34 (HL), 2009 WL 1796068, at *4 (M.D. Ga. June 22, 2009). In reviewing a Motion for Summary Judgment based upon a decision rendered by a federal administrative agency, the District Court's scope of review is limited and should afford great deference to the agency's action. *See id*.

In addition, where the court reviews the decision of an administrative agency, the

summary judgment motion "stands in a somewhat unusual light, in that the administrative record

provides the complete factual predicate for the court's review." See Fener v. Hunt, 971 F. Supp.

1025, 1030 (W.D. Va. 1997) (quoting Krichbaum v. Kelley, 844 F. Supp. 1107, 1110 (W.D. Va.

1994)). See also Mahon v. United States Dep't of Agric., 485 F.3d 1247, 1253 (11th Cir. 2007)

(Summary judgment is particularly appropriate in cases in which a district court is asked to

review a decision rendered by a federal administrative agency). Because the factual record is

closed, the "plaintiff's burden on summary judgment is not materially different from his ultimate

burden on the merits." Fener, 971 F. Supp. at 1030. Therefore, in the Defendant's view, the

hearing on Defendant's Motion for Summary Judgment will resolve the remaining issue in this

case and will obviate the need for any further development of the facts by way of a trial.

Undersigned counsel attempted to contact Plaintiffs regarding this motion but was unable

to reach them.

Respectfully submitted,

TIMOTHY J. HEAPHY

United States Attorney

Date: July 28, 2014

/s/ Kartic Padmanabhan

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CERTIFICATE OF SERVICE

I certify that on July 28, 2014, I caused the foregoing Motion to Cancel Jury Trial to be electronically filed with the Court using the CM/EFC system, and mailed a true copy thru the United States Postal Service to the following non-CM/ECF participants:

Christopher B. Julian Renee G. Julian 474 Orchard View Drive Ararat, VA 24053

/s/ Kartic Padmanabhan
Kartic Padmanabhan
Assistant United States Attorney